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No. 79-870

In the Supreme Court of the United States

OCTOBER TERM, 1979

UNITED STATES RAILROAD RETIREMENT BOARD,
APPELLANT

v.

GERHARD H. FRITZ

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA

REPLY BRIEF FOR THE APPELLANT

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Appellee concedes (Motion to Affirm 7) that Congress could have eliminated "windfall" or dual benefits under the Social Security Act and the Railroad Retirement Act for all present and former railroad employees. See also *Hisquierdo* v. *Hisquierdo*, 439 U.S. 572, 575 (1979). Appellee merely takes issue with the particular lines Congress has drawn in preserving these benefits for certain present and former railroad employees while eliminating them for others,

based on Congress' weighing of the equities of the employees concerned and the needs of the railroad retirement system. See *Mathews* v. *Diaz*, 426 U.S. 67, 82-84 (1976). But in the "withholding of a noncontractual benefit under a social welfare program * * * the Due Process Clause can be thought to interpose a bar only if the statute manifests a patently arbitrary classification, utterly lacking in rational justification." *Flemming* v. *Nestor*, 363 U.S. 603, 611 (1960); see also *Califano* v. *Aznavorian*, 439 U.S. 170, 177 (1978). The classification appellee attacks here plainly has a rational justification.

1. Stripped of its innuendo and erroneous and irrelevant assertions about the manner in which management and labor submitted the draft bill to Congress (Motion to Affirm 6, 11-17, 19),[1] appellee's legal

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[1] As demonstrated in the Jurisdictional Statement (at 19-24) and the Brief of Amicus National Railway Labor Conference (at 16-31; see particularly pages 19-21 & n.26, 27-29 & n.33), the Joint Labor-Management Negotiating Committee fully explained the operation of 45 U.S.C. 231b(h) to Congress. Moreover, the very language of that section and the portions of the committee reports, hearing transcripts, and Congressional Record explaining it (as opposed to the general statements elsewhere in the reports and hearing transcripts relied upon by appellee, Motion to Affirm 10, 14-15) conclusively establish that Congress was aware that former railroad employees in appellee's class would not receive full "windfall" benefits. But even if, as appellee suggests, Congress was unaware of the precise impact of the plain language it enacted, that would not render the statute irrational. See *Delaware Tribal Business Committee* v. *Weeks*, 430 U.S. 73, 89 (1977).

Appellee's references to action taken by Congress in 1954 to correct perceived unfairness in an amendment to the Act

argument is simply that Section 3(h) of the Railroad Retirement Act of 1974, 45 U.S.C. 231b(h), is unconstitutional because it irrationally distinguishes between classes of annuitants who are "identically" or "similarly" situated (Motion to Affirm 3-4, 18-19). This argument must fail because its premise is incorrect: appellee and the class he represents are not situated similarly to those who will receive full "windfall" benefits under 45 U.S.C. 231b(h).

It is true that the members of appellee's class, like those who are entitled to receive "windfall" benefits under 45 U.S.C. 231b(h), had completed the requisite 10 years of railroad service and were permanently

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passed in 1951 (see Motion to Affirm 4, 13 n.8) and statements made by a single Member of Congress after the passage of the 1974 Act (*see* Motion to Affirm 16-17) merely indicate that Congress, or its individual members, sometimes believe prior enactments to have been unwise, and reveal the wisdom of deferring to the political process to correct what may be perceived as inequities or oversights in legislation. See *Vance* v. *Bradley*, 440 U.S. 93, 97 & n.12 (1979).

Typical of appellee's mischaracterization of the legislative record is his suggestion (Motion to Affirm 16-17) that William Dempsey, Chairman of the National Railway Labor Conference, misled a Senate subcommittee in 1976—well after passage of the 1974 Act—by erroneously explaining the operation of 45 U.S.C. 231b(h) as it would affect persons in appellee's position. This is simply wrong. Dempsey's statement focused on the very issue involved in this case and, *in the very passage cited by appellee*, explicitly observed that a person who left the railroad industry in 1955 with 10 years of railroad service but "did not have enough social security service at that time to qualify for a social security benefit * * * does not get the * * * windfall dual benefit." *Railroad Retirement Act Amendments, 1976: Hearing on S. 3662 Before Subcomm. on Labor of the Senate Comm. on Labor and Public Welfare*, 94th Cong., 2d Sess. 49 (1976).

"vested" under the Social Security Act as of January 1, 1975, the effective date of the Railroad Retirement Act of 1974. But the similarity ends there. In order to be eligible for the full "windfall" benefit appellee seeks,[2] a retired railroad employee must have been employed in the railroad industry during 1974 or must have had a "current connection" with the industry—*i.e.*, worked for a railroad employer in 12 of the preceding 30 months (45 U.S.C. 231(*o*))—either on the effective date of the 1974 Act or when he subsequently retired. 45 U.S.C. 231b(h)(1).[3] Thus, the full "windfall" component is available only to employees who had an affiliation with the industry at the time Congress considered and passed the legislation or when they later retired.

Appellee's class, on the other hand, consists of former railroad employees who left the railroad industry more than one year before the effective date

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[2] As explained below (see pages 7-8, *infra*), a lesser "windfall" benefit is available for certain employees who, like appellee, left the railroad industry before 1974 and had no "current connection" with the industry when the 1974 Act was passed.

[3] A retired railroad employee is also entitled to full "windfall" benefits if he completed 25 years of railroad service as of the effective date of the 1974 Act, even if he left the industry before 1974 and did not have a "current connection" with it at that time or when he later retired. 45 U.S.C. 231b(h)(1). Appellee concedes (Motion to Affirm 8 n.4) that Congress could properly distinguish employees in this category by regarding them as "career railroaders" entitled to full "windfall" benefits under 45 U.S.C. 231b(h)(1).

of the 1974 Act, retained no "current connection" with the industry on the effective date of the Act, and did not return to the industry after the effective date and thereby reestablish a "current connection" with the railroad industry prior to their retirement. Appellee's class, in other words, consists of those who no longer had any relationship with the industry for which the railroad retirement system was designed, either when the 1974 Act was passed or when they retired.

Congress may make eligibility for social welfare benefits turn on the *character* as well as the *duration* of a person's railroad work and may distinguish between those who have a lingering affinity with the industry it has chosen to regulate and those who do not. See *Mathews* v. *Diaz*, *supra*, 426 U.S. at 82-83. As this Court noted in *Hisquierdo* v. *Hisquierdo*, *supra*, 439 U.S. at 573, the Railroad Retirement Act provides a system of benefits for "persons who pursue careers in the railroad industry." Congress could rationally determine that those who were in the railroad industry in 1974, or subsequently returned to the industry before their retirement, were more likely to be among the class of "persons who pursue careers in the railroad industry" than those who had left the industry before 1974 and never returned.

Moreover, the Court noted in *Hisquierdo* that the Act has as its purpose to "encourage older workers to retire by providing them with the means 'to enjoy the closing days of their lives with peace of mind and physical comfort,' and so [to] 'assure more rapid

advancement in the service' and also more jobs for younger workers." 439 U.S. at 573-574, quoting H.R. Rep. No. 1711, 74th Cong., 1st Sess. 10 (1935). It was not necessary in 1974 for Congress to retain whatever incremental incentive to retire is created by the "windfall" benefit provision for those who had already left the railroad industry—*i.e.*, for those whose retirement would not assure more rapid advancement and more jobs for younger workers in the industry. Congress could also rationally have determined that those who left the railroad industry permanently would, in general, be less dependent on their railroad retirement annuities for retirement security than those who remained in the industry, perhaps because their non-railroad employers might have a pension plan similar to that provided under the Act.

It must be emphasized as well that all that is at issue here is eligibility for *one* component of the total government-sponsored retirement benefits to which a former railroad employee is entitled. Under the 1974 Act, a railroad employee with at least 10 years of railroad service receives an annuity comprised of at least two components. The first corresponds to the amount he would receive if his railroad work were covered by the Social Security Act, 45 U.S.C. 231b(a), subject, of course, to the offset in 45 U.S.C. 231b(m) for social security benefits received directly for non-railroad work (see J.S. 7-8). The second component is based solely on earnings in the

railroad industry and is analogous to a private pension. 45 U.S.C. 231b(b). See *Hisquierdo* v. *Hisquierdo*, *supra*, 439 U.S. at 574-575. The members of appellee's class will receive these two components of their annuity in full. The "windfall" component in 45 U.S.C. 231b(h) that appellee's class will not receive is being phased out because of the drain on the Railroad Retirement Account the payment of full dual benefits had caused in the past and because Congress thought it anomalous and unfair that, under a program designed to benefit railroad workers, persons who divided their careers between railroad and nonrailroad work would actually receive greater total benefits than those who spent their entire careers in the railroad industry. See J.S. 5-6. Surely, in arriving at the most equitable manner for phasing out the "windfall" occasioned by the receipt of dual benefits, Congress could rationally conclude that the component at issue here is less of a "windfall" or an anomaly for those workers who had an affiliation with the railroad industry when Congress considered the legislation or when they retired than for those who did not.

Finally, appellee is simply wrong in suggesting (Motion to Affirm 3-4) that the only railroad employees "vested" under both the Railroad Retirement Act and the Social Security Act by January 1, 1975, who can qualify for "windfall" benefits are those who worked for the industry in 1974 or had a "current connection" with the industry at the close of 1974. Congress provided in 45 U.S.C. 231b(h) that persons

with 10 years of railroad service who, like appellee, left the railroad industry before 1974 without retaining a "current connection" with the industry could nevertheless receive a "windfall" benefit [4] *if* they were "vested" under the Social Security Act at the close of the year in which they last performed railroad work.[5] Thus, the only otherwise eligible former railroad employees denied "windfall" benefits are those who, again like appellee, had no statutory entitlement to dual benefits at the time they left the railroad industry but *thereafter* (and prior to January 1, 1975) became eligible for dual benefits when they performed enough non-railroad work to become eligible for social security benefits. Congress could legitimately choose to preserve the statutory entitlement to "windfall" benefits only for persons who had actually accrued that entitlement while still employed in the railroad industry.

2. Congress was confronted in 1974 with the possible bankruptcy of the Railroad Retirement Account stemming in large measure from the drain on the Account caused by annuitants who received dual bene-

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[4] This benefit under 45 U.S.C. 231b(h)(2) is somewhat smaller than the benefit under 45 U.S.C. 231b(h)(1) for those who had an affiliation with the industry in 1974. *See* J.S. 9-10 n.5.

[5] Appellee likewise fails to mention that a former railroad employee who had no affiliation with the industry in 1974 could also receive a "windfall" benefit under 45 U.S.C. 231b(h)(1) if he had 25 years of railroad service by 1974 or if he later returned to railroad work and reestablished a "current connection" before he retired.

fits under the Social Security Act and the Railroad Retirement Act. The 1974 Act sought to restore the solvency of the Account by eliminating "windfall" benefits in the future (see J.S. 4-5). At the same time, Congress recognized that many employees in the railroad industry—and many former railroaders—who had already become "vested" under both programs or might do so before they retired had an expectation that they would receive benefits under both the Social Security Act and the Railroad Retirement Act upon retirement.

In balancing the fiscal needs of the railroad retirement system against the expectations of present and former railroad workers, Congress could have written a broad grandfather clause that preserved the potential for receiving maximum benefits under both acts for everyone who had ever worked in the railroad industry before the effective date of the 1974 Act, whether or not the worker had remained in the railroad industry or had yet performed any non-railroad work that could be credited toward eligibility under the Social Security Act. But this would have continued a sizable drain on the Account for many years. Congress therefore sought to tailor the class of potential recipients of "windfall" benefits to correspond more closely to those who it believed had the strongest equitable claim to receiving such benefits.

Appellee concedes (Motion to Affirm 8 n.4) that some of the lines drawn by Congress in tailoring the class of eligible recipients are valid. For example, he does not contest Congress' decision to grant full

"windfall" benefits to former railroad employees who had completed 25 years of service by the effective date of the 1974 Act, even though they, like appellee, may have left the industry before 1974 and had no "current connection" with the industry in that year or when they retired. 45 U.S.C. 231b(h)(1). Appellee also concedes (Motion to Affirm 8 n.4) that Congress properly limited eligibility for "windfall" benefits to those who had performed the 10 years of railroad work necessary to become eligible for a railroad retirement annuity prior to the effective date of the 1974 Act. But an employee who had, for example, completed sufficient non-railroad work to be "vested" under the Social Security Act by the effective date of the 1974 Act but had only nine years and eleven months of railroad work by that time might have had as strong an expectation of receiving dual benefits under both acts as appellee, but he too would be denied any windfall benefits because he needed one more month of railroad work to become "vested" under the Railroad Retirement Act.

Thus, no matter what lines Congress drew—short of grandfathering everyone who had ever worked in the railroad industry before the effective date of the 1974 Act—they would have produced "some harsh and apparently arbitrary consequences." *Mathews* v. *Diaz, supra,* 426 U.S. at 83. But it is no objection to a statutory classification that "such rules [may] produce seemingly arbitrary consequences in some individual cases," *Califano v. Jobst,* 434 U.S. 47, 53 (1977), and Congress was not required to take an

all-or-nothing approach to the problem of "windfall" benefits. A grandfather provision embodying a "gradual approach to the problem is not constitutionally impermissible." *New Orleans* v. *Duke*, 427 U.S. 297, 305 (1976). Indeed, if it were, the result might have been to deny "windfall" benefits to everyone, because Congress might have been unwilling to assume the financial burden of extending eligibility well beyond that provided in the 1974 Act.

For the foregoing reasons, as well as those set forth in the Jurisdictional Statement, probable jurisdiction should be noted. We also renew our suggestion of summary reversal.

Respectfully submitted.

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